

REMARKS

Claims 1-9, 11-22, and 24-30 were presented for examination and were pending in this application. In a Final Office Action dated September 20, 2005, claims 1-9, 11-22, and 24-30 were rejected.

Claims 1, 14, 27, 29 and 30 are amended herein, and claims 12, 25, and 28 are canceled herein without prejudice or disclaimer. Claims 10 and 23 were previously canceled. The amendments to claims 1, 14, 27, 29 and 30 are supported by the specification, for example on page 11, lines 19-25; page 12, lines 11-14; page 15, lines 19-25; page 16 lines 5-11 and in Figures 3 and 6A.

Objection to the Specification

The Examiner objected to the specification because the word “pseudocode” was misspelled as “psuedocode” on page 7, line 6 and page 17, line 26. The specification was amended herein to correct this typographical error, and this objection is overcome.

Response to Rejection Under 35 USC §112, Paragraph 1

In paragraph 4 of the Final Office Action, the Examiner has rejected claims 12, 25, 28, and 30 as allegedly being based on a disclosure which is not enabling, due to the variously recited limitation of “utilizing a state machine to be representative of the response time if the state is in a valid state”. Claims 12, 25, and 28 are hereby canceled without prejudice or disclaimer merely to expedite the prosecution of this application. This limitation was also deleted from claim 30 merely to expedite the prosecution of this application. Thus, this rejection is overcome.

Response to Rejection Under 35 USC §102(b)

In paragraphs 6-19 of the Final Office Action, the Examiner rejected claims 1-6, 8-9, 11-19, 21-22, 24-28, and 30 under 35 USC §102(b) as allegedly being anticipated by U.S. Patent No. 6,839,751 (“Dietz”). This rejection is now traversed.

Independent claims 1, 14, 27, and 30 as amended, variously claim a method, a computer-readable medium, or a system for calculating application verb response times, and variously recite:

“determining whether the application verbs are valid”,

“responsive to determining that the application verbs are valid... updating a state machine”,

“determining whether the state machine is in a valid state”, and

“responsive to determining that the state machine is in a valid state...storing the information relating to the application verbs.”

These aspects of the claimed invention are greatly beneficial. By storing the information relating to the application verbs responsive to a determination of a state machine, which in turn is updated responsive to determining that the application verbs are valid, the claimed invention limits the information stored relating to the application verbs and allows for selective analysis and recording of application verbs.

Dietz fails to disclose determining whether application verbs are valid, as recited in independent claims 1, 14, 27, and 30. Dietz may disclose checking a unique flow signature against a database, but the flow signature disclosed by Dietz is neither conceptually nor functionally equivalent to that of an application verb. Dietz merely discloses a process of

generating a flow signature using hash and packing functions to create a unique identifier on the basis of packet component information (see Figure 7). Dietz discloses gathering packet component information from packets in Figure 6. However, Figure 6 and the associated text of Dietz do not disclose checking any of these components to see if they contain valid application verbs, but rather disclose combining packet components for the purposes of later performing a hash function. There is no specific disclosure anywhere in Dietz of determining if application verbs are valid. Searching for the hashed signature of packet component information regardless of validity as disclosed in Dietz is not equivalent to determining if application verbs are valid as recited in claims 1, 14, 27, and 30.

As Dietz in its entirety does not disclose “determining whether application verbs are valid,” Dietz certainly does not disclose “responsive to determining that the application verbs are valid...updating a state machine” as recited in claims 1, 14, 27, and 30. While Dietz does disclose a state processor, the state processor disclosed by Dietz is not updated responsive to determining that the application verbs are valid.

Furthermore, Dietz does not disclose “determining whether the state machine is in a valid state”, and “responsive to determining that the state machine is in a valid state...storing the information relating to the application verbs” as recited in claims 1, 14, 27 and 30. Rather, Dietz describes a method for re-using information from data transactions in maintaining statistics in network monitoring by “determining quality of service metrics based on each and every packet”. See Dietz Col.4, lines 14-15. Dietz merely discloses calculating response time “between the start of Data Messages from the Client to the Server and the start of their subsequent response Data Messages from the Server to the Client.” See Dietz, col. 36, lines 54-59. As Dietz records statistics for all packet transmissions, every packet

transmission or receipt associated with an application flow affects the statistical time measurement for that application flow. By contrast, in the claimed inventions of claims 1, 14, 27, and 30, information relating to the application verbs is stored responsive to “determining whether the state machine is in a valid state”. Although Dietz “determines the protocols and where in the state sequence for a flow this protocol’s packet belongs,” this determination is simply used to classify the received packet into a flow to simplify later addition of more information to the flows. See Dietz col. 11, lines 43-45; col. 11, lines 40-58; col. 12, lines 62-65. Unlike the inventions of claims 1, 14, 27, and 30, Dietz never determines “whether the state machine is in a valid state” before storing information, but instead records information for all received packet data.

Therefore, it is respectfully submitted that the inventions of claims 1, 14, 27, and 30, as amended, are patentably distinct from Dietz.

Claims 2-6, 8, 9, 11, and 13 are dependent directly or indirectly from claim 1, and claims 15-19, 21, 22, 24, and 26 are dependent directly or indirectly from claim 14. Therefore, all arguments set forth with respect to claims 1 and 14 are hereby incorporated so as to apply to claims 2-6, 8, 9, 11, 13, 15-19, 21, 22, 24, and 26. Thus, it is respectfully submitted that the inventions of dependent claims 2-6, 8, 9, 11, 13, 15-19, 21, 22, 24, and 26 are also patentably distinct from Dietz for at least the same reasons as described above.

Response to Rejection Under 35 USC 103(a)

In paragraphs 21-23 of the Final Office Action, the Examiner rejected claims 7, 20, and 29 under 35 USC §103(a) as allegedly being obvious over Dietz. This rejection is respectfully traversed.

Claims 7 and 20 (through their dependency from claims 1 and 14) and claim 29 include “determining whether the application verbs are valid”, “responsive to determining that the application verbs are valid... updating a state machine”, “determining whether the state machine is in a valid state”, and “responsive to determining that the state machine is in a valid state...storing the information relating to the application verbs.” As explained above, Dietz fails to disclose “determining whether the application verbs are valid”, “responsive to determining that the application verbs are valid... updating a state machine”, “determining whether the state machine is in a valid state”, and “responsive to determining that the state machine is in a valid state...storing the information relating to the application verbs.”

To establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. See MPEP §2143.03. The deficient disclosures of Dietz preclude the Examiner from establishing even a *prima facie* basis from which a proper determination of obviousness can be made. Thus, it is respectfully submitted that claims 7, 20, and 29 are also patentably distinct from Dietz.

Conclusion

In summary, it is respectfully submitted that all pending claims 1-9, 11, 13-22, 24, 26-27, and 29-30 are in condition for allowance. Favorable action is solicited.

Respectfully Submitted,

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